



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit  
Schemes (Scotland) Regulations 2011**

**Chamber Ref: FTS/HPC/PR/23/1962**

**Re: 43 Chacefield Street, Bonnybridge FK4 1PS ("the Property")**

**Parties:**

**Clair Kane, 10 Beech Crescent, Westquarter, Falkirk FK2 9RU ("Applicant")**

**Patrick Flood, Maria Theresa Apartment Block, Calle Antonia Gala, Malaga,  
2691, Spain ("Respondent")**

**Tribunal Members:  
Joan Devine (Legal Member)**

**Decision :**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay to the Applicant the sum of £1100.**

**Background**

1. The Applicant made an application in Form G ("Application") dated 16 May 2023 under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Rules") stating that the Respondent had failed to timeously lodge a tenancy deposit in an appropriate scheme in breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations"). The documents produced to the Tribunal by the Applicant were:
  - A private residential tenancy agreement ("PRT") between the Applicant, the Respondent dated 5 June 2018 and which commenced on 6 June 2018.
  - A notice to leave dated 13 January 2023 asking the Applicant to vacate the Property on 10 April 2023.
  - Screenshots of text messages between the Parties including one dated 18 May 2018 noting that the deposit had been received.

- Email from Safe Deposits Scotland dated 24 April 2023 stating that they do not hold a deposit on the basis of the information provided.
  - Email from Mydeposits Scotland dated 4 May 2023 stating they the Applicant's deposit was not protected by their scheme.
  - Email from Letting Protection Scotland dated 11 May 2023 stating they the Applicant's deposit was not protected by their scheme.
2. A Case Management Discussion ("CMD") was fixed for 27 September 2023. In advance of the CMD the Applicant advised the Tribunal that she would not attend the CMD and that she wished the Tribunal to proceed in her absence. In response to a query from the Tribunal she said that the tenancy ended on 10 April 2023.
  3. The Respondent did not attend the CMD. It was apparent that the Application and notice of the date of the CMD had not been served on the Respondent. The Tribunal fixed a continued CMD to allow the Application to be served and the date intimated to the Respondent.

### **Continued CMD**

4. A continued CMD took place on 18 January 2024 by conference call. The Application and notice of the date of the continued CMD had been served on the Respondent by advertisement on the Tribunal website between 24 November 2023 and 18 January 2024. Neither the Applicant or the Respondent was in attendance. The Applicant had made clear that she did not wish to attend a CMD due to health issues and was content for the Tribunal to proceed in her absence. The Tribunal was satisfied that notice of the CMD had been given to the Respondent and determined to proceed to consider the application on the basis of the material lodged by the Applicant.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a tenancy agreement which commenced on 5 June 2018.
2. The tenancy came to an end on 10 April 2023.
3. The Applicant paid to the Respondent a deposit of £550 on or about 18 May 2018.

4. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.
5. The deposit was not returned to the Applicant at the end of the tenancy.

### **Relevant Legislation**

5. Regulation 3 of the 2011 Regulations provides *inter alia* :  
  
*"(1) A Landlord who has received a tenancy deposit in connection with a relevant tenancy must within 30 working days of the beginning of the tenancy–*  
  
*(a) pay the deposit to the scheme administrator of an approved scheme; and*  
  
*(b) provide the Tenant with the information required under Regulation 42.....*
6. Regulation 9 of the 2011 Regulations provides:  
  
*"(i) A Tenant who has paid a tenancy deposit may apply to the First Tier Tribunal for an order under Regulation 10 where the Landlord did not comply with any duty in Regulation 3 in respect of that tenancy deposit.*  
  
*(ii) An Application under paragraph 1 must be made no later than three months after the tenancy has ended."*
7. Regulation 10 of the 2011 Regulations provides *inter alia* :  
  
*"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal –*  
  
*(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit"*

### **Reasons for the Decision**

8. The Tribunal had sight of text messages which evidenced that the Applicant had paid a deposit of £550 to the Respondent on or about 18 May 2018. The Tribunal had sight of a tenancy agreement between the Parties which commenced on 5 June 2018 and of a Notice to Leave which terminated the tenancy as at 10 April 2023. The Tribunal had sight of text messages between the Parties in which the Applicant asked for her deposit to be returned and the Respondent said *"I'm afraid there will be money coming off deposit for damages and cleaning when I have final bill I will refund rest of deposit"* and *"If you want*

*to take this further you are welcome to do so”*. In the Application the Applicant said the deposit had not been returned. The evidence before the Tribunal indicated that the deposit had not been returned to the Applicant at the end of the tenancy.

9. The tenancy ended on 10 April 2023. The Application was dated 16 May 2023 and the final information sought by the Tribunal had been provided by 30 June 2023. The Application was timeous.
10. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. The Tribunal was satisfied that the Respondent did not lodge the deposit with an approved scheme.
11. The amount to be awarded is a matter for the discretion of the Tribunal having regard the factual matrix of the case before it. The Tribunal considered the comments of Sheriff Ross in *Rollett v Mackie* UTS/AP/19/0020. At para 13 and 14 he considered the assessment of the level of penalty and said:

*"[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. the finding that the breach was not intentional is therefore rational on the facts, and tends to lessen culpability.*

*[14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present."*

12. The Respondent made no representations to the Tribunal and did not lodge any documents. No mitigating factors were placed before the Tribunal. No explanation was given for the failure to comply with the 2011 Regulations. On the other hand, there was no evidence before the Tribunal of any aggravating factors present in this case of the sort described in *Rollett v Mackie*.

13. Having regard to the information available the Tribunal determined that the sanction should be £1100 in the particular facts and circumstances of this case. This figure is twice of the deposit.

### **Decision**

The Tribunal granted an Order for payment of £1100 in terms of Regulation 10(a) of the 2011 Regulations.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

**Legal Member**

**Date: 18 January 2024**